

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

**Curtis Building
1000 SW Jackson Street
Suite 540
Topeka, Kansas 66612 - 1368**

IN THE MATTER OF:

**POLLUTION AT
SUNFLOWER ARMY
AMMUNITION PLANT**

**ADDENDUM TO
CONSENT ORDER
Case No. @**

The parties hereto, the Kansas Department of Health and Environment ("KDHE") and the United States Army ('Army'), pursuant to Chapter 158 of the, 1999, session Laws and 42 U.S.C. Sect. 9620(h)(3)(C)(iv) hereby represent and state as follows,

1. In the Army Agreement with the Developer, dated _____, the Army has agreed to perform, and thereby retained, those remediation obligations at Sunflower set out in Section ____ at page _____.

The AREP duties referred to at paragraph _____ of the Army Agreement are set out in Exhibit ____, attached to the Army Agreement.

2. The Army recognizes and affirms that it is ultimately responsible for causing the completion of environmental remediation of contamination it caused at Sunflower necessary to provide the CERCLA covenant required by section 120(h)(3)(A)(ii).

- a. The Army further specifically recognizes and affirm its responsibility for completing or assuring the completion of environmental remediation when the Developer has expended \$_____ million in Qualified Expenses as defined in the Consent Order and Army-developer Agreement.
- b. If further remediation is required beyond that provided by the Developer, the Army may satisfy its remediation obligation by requiring the Developer or another party to continue the remediation using

funds made available through the financial instruments referenced in paragraph _____ of the Consent Order and/or by requiring the Developer to comply with all of its obligations under Army-Developer Agreement. Alternatively, in the event that the financial instruments are exhausted or otherwise unavailable, the Army shall complete the remediation of Sunflower in order to provide for the timely grant of the CERCLA 120(h)(3)(A)(ii) covenant by its own means if the financial instruments are not available or insufficient.

3. In the event that it is necessary for the Army to complete the remediation at Sunflower and the documented remediation plan of the Army does not meet the performance standards for residential use set forth in the above Consent Order, KDHF shall initiate payment for that level of cleanup from that \$_____ million portion of the, Payment Obligation Surety Bond designated for such purpose.

4. In the event that the Army is called upon to remediate Sunflower, the Army will, notwithstanding any standard risk-based priorities, take all steps necessary to submit, as soon as possible but in no event later than the next budget cycle, a budget request with the priority necessary to support its commitments in order to allow for timely development of Sunflower for funds to the Office of Management and Budget that adequately address the funding need for the commitment. Providing said funds are received, the funding will not be used for any other purpose without the approval of the Assistant Secretary of the Army for Installations and Environment.

5. The Army's obligation to perform actions as set forth in this Addendum to Consent Order is subject to the availability of appropriated funds and the provisions of the Anti-Deficiency Act.

6. The Army will use its best efforts to complete the remediation of Sunflower in a timely manner regardless of the financial viability of the Developer or the availability of funds from the financial instruments described above which are provided by the Developer.

7. In furtherance of the goals and obligations stated in this Addendum, the Kansas Department of Health and Environment affirms and agrees to:

Look to the Developer for continued remediation of Sunflower pursuant to the Consent Order, provided the Developer has expended less than \$_____ million in Qualified Expenses or

adequate funds are available under the financial instruments to permit continued remediation by the Developer; and

Cooperate with the Army in assuring that proceeds of the Payment Obligation Surety Bond are available and directed towards the payment of Corrective Action under the Consent Order, including the appropriate payment of any remediation contractor or contract.

UNITED STATES DEPARTMENT OF THE ARMY:

_____ Raymond J. Fatz Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health)	_____ Date
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STATE OF KANSAS:

_____ Secretary Kansas Department of Health and Environment	_____ Date
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